

PRIVILEGED AND CONFIDENTIAL

DRAFT -- June 16, 1987

MEMORANDUM TO THE COMMITTEE OF COUNSEL

Following a discussion among counsel for the six major domestic cigarette manufacturers, the following guidelines have been developed with respect to the operation of the Tobacco Institute Testing Laboratory ("TITL") and the inclusion in cigarette advertising of the "tar" and nicotine numbers generated by the TITL. These guidelines are designed to resolve a number of issues and uncertainties raised by the decision announced by the Federal Trade Commission on April 15, 1987, to close its in-house testing laboratory.

TITL OPERATION

1. To the extent consistent with these guidelines, the TITL will continue to operate in the manner it has operated in the past. Specifically, the TITL shall be an activity of The Tobacco Institute but the books of accounts and records of the TITL shall be maintained separate and apart from those of The Tobacco Institute. The operations of the TITL shall be supervised by a committee consisting of one representative of each company participating in the laboratory ("Participating Company"). The day-to-day operations of the laboratory shall be subject to the supervision of a Laboratory Director who shall be responsible to the committee.

2. Each Participating Company shall make an initial annual payment of Two Hundred and Fifty Dollars

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(\$250). The balance of the expense of operating the TITL, minus any user fees levied and collected in accordance with paragraph 3 immediately below, shall be allocated on a share of domestic market basis among the Participating Companies whose respective annual sales of United States tax paid cigarettes exceed two billion units.

3. A non-Participating Company that desires to submit for testing a cigarette brand or brand variety manufactured or imported for sale in the United States will be permitted to do so upon payment of a user fee. Such fee shall be calculated by dividing the total cost of operating the TITL during the calendar year most recently ended by the number of cigarette brand varieties tested by the TITL during such calendar year. In making such calculation, adjustments shall be made for any significant cost savings or additional expenses that are reasonably anticipated for the then-current calendar year. The user fee shall be payable in advance of testing.

4. The TITL shall initiate and attempt to complete during the second half of calendar year 1987 a cigarette test series, utilizing to the extent appropriate and practicable the pick-up and testing methodology previously used by the Federal Trade Commission Testing Laboratory, including CO testing. The TITL shall not be obligated to conduct at any time ad hoc tests for Participating or non-Participating Companies. Any such ad hoc request shall be deferred by the TITL until the market pick-up for the next-scheduled general test series.

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5. Periodic reports of test results of the TITL shall be made available simultaneously, and on the same basis, to all Participating Companies as well as to any non-Participating Company that has requested that one or more of its cigarette brands or brand varieties be included in the particular test series and has paid the appropriate user fee. Such reports shall be released first in draft form. Any Participating or non-Participating Company, as described in this paragraph, shall have thirty (30) working days following receipt of any draft report to demand a retest of any of its cigarette brands or brand varieties included in the report. No more than one retest shall be conducted by the TITL of any cigarette brand or brand variety in connection with any individual test series or report. The final report for any test series shall include, in the case of any brand or brand variety that has been subject to retest, only the numbers generated on the retest.

6. Any Participating Company may withdraw from the TITL by giving ten (10) days' advance notice in writing to the Director of the TITL. Upon withdrawal, a company shall remain liable for dues and assessments thereafter to the extent necessary to cover any obligation created or expense incurred prior to the effective date of such withdrawal.

USE OF TITL TEST RESULTS

1. Each of the Participating Companies shall utilize in its cigarette advertising, to the extent and in the

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manner described in this paragraph, the "tar" and nicotine ratings for the advertised brand as set forth in the most recent report of the TITL or the ratings otherwise authorized by law. Such obligation shall apply to any advertising that is first submitted in final form for printing, engraving or other production following the date on which these guidelines are approved by the Participating Companies. The obligation described in this paragraph shall not apply if (1) the advertised brand has been changed in a way that renders obsolete or inaccurate the "tar" or nicotine rating contained in the most recent TITL report for the advertised brand, (2) the Participating Company is authorized by law to include in its advertising a "tar" or nicotine rating other than the rating contained in the TITL report or (3) the advertised brand is "new" or for some other reason has not been tested by the TITL.

2. Subject to the limitations described in paragraph 1 immediately above, each of the Participating Companies shall include in any report to the Federal Trade Commission calling for information concerning the "tar" and nicotine ratings of its cigarette brands and brand varieties the ratings contained in the most recent report of the TITL for such brand or brand variety.

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